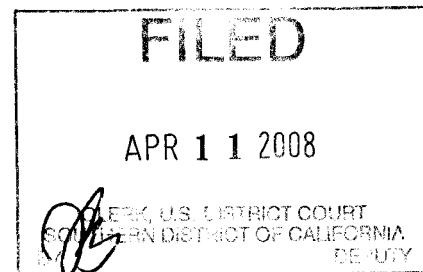


1 KAREN P. HEWITT  
United States Attorney  
2 DOUGLAS KEEHN  
Assistant United States Attorney  
3 California State Bar No. 233686  
United States Attorney's Office  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101  
Telephone: (619) 557-6549  
6  
7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA 08cr1116-W

10 UNITED STATES OF AMERICA, )  
11 )  
Plaintiff, )  
12 )  
v. )  
13 )  
MARCELINO MOLINA-BALDERRAMA, )  
14 )  
Defendant. )  
15 )

Magistrate Case No. 08MJ0952

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
18 Douglas Keehn, Assistant United States Attorney, and defendant MARCELINO MOLINA-  
19 BALDERRAMA, by and through and with the advice and consent of defense counsel,  
20 Jennifer L. Coon, Federal Defenders of San Diego, Inc., that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
25 of Inducing and Encouraging Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C.  
26 § 1324(a)(1)(A)(iv) and (v)(II).

27 //

28 //

WDK:psd:4/1/08

1           2.       Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.       Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **April 28, 2008**

6           4.       The material witness, Jacobo Fernandez-Garcia, in this case:

7               a.       Is an alien with no lawful right to enter or remain in the United States;

8               b.       Was induced or encouraged by defendant to enter the United States in  
9 violation of the law on or about March 27, 2008;

10              c.       Was found in a vehicle driven by defendant at the San Ysidro, California Port  
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that he was an alien  
12 with no lawful right to enter or remain in the United States;

13              d.       Was paying \$2,000 to others to be brought into the United States illegally  
14 and/or transported illegally to his destination therein; and,

15              e.       May be released and remanded immediately to the Department of Homeland  
16 Security for return to his country of origin.

17           5.       After the material witnesses are ordered released by the Court pursuant to this  
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21              a.       The stipulated facts set forth in paragraph 4 above shall be admitted as  
22 substantive evidence;

23              b.       The United States may elicit hearsay testimony from arresting agents  
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
26 of (an) unavailable witness(es); and,

27 //

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Marcelino Molina-Balderrama

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to his country of origin.

It is STIPULATED AND AGREED this date.

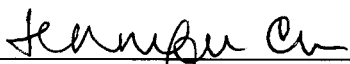
Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

Dated: 4/11/08

  
DOUGLAS KEEHN  
Assistant United States Attorney

Dated: 4/11/08

  
JENNIFER LICOON  
Defense Counsel for MOLINA-BALDERRAMA

Dated: 4/4/08

  
MARCELINO MOLINA-BALDERRAMA  
Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

**SO ORDERED**

Dated: 4/11/08

  
United States Magistrate Judge